

¹ See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

FACTUAL HISTORY

On October 15, 2001 appellant, then a 41-year-old letter carrier, filed a claim alleging that he sustained a recurrence of an injury on February 5, 2001 causally related to a September 23, 2000 injury for carpal tunnel syndrome Office File No. 250573486.² The employing establishment controverted appellant's claim for "strain and degenerative neck" as he did not explain how it was work related.

In support of his claim, appellant submitted medical evidence regarding his carpal tunnel and cervical conditions noting that he was post carpal tunnel repair and had cervical lesions, for which an anterior cervical decompression was recommended. Included was a February 15, 2001 note from Dr. Ben L. Nguyen, a Board-certified neurosurgeon, indicating that appellant's duties as a letter carrier contributed to his cervical degeneration. Dr. Nguyen performed cervical surgery on appellant on July 19, 2001.

The Office advised appellant by a January 25, 2002 letter that the evidence he submitted was insufficient to establish that he "sustained an injury" on February 5, 2001 and requested additional factual and medical evidence within 30 days.

By decision dated April 15, 2002, the Office denied appellant's claim for neck injury finding that the medical evidence failed to establish that his cervical condition was causally related to factors of his federal employment.

Appellant requested an oral hearing before an Office hearing representative. He submitted medical evidence, including the April 25, 2002 report of Dr. Henry Herbert, Board-certified in occupational medicine, who reviewed his treatment of appellant. He stated that appellant's cervical condition, while not caused by his job, had been made worse by lifting bags. The oral hearing was held on November 25, 2002 at which appellant testified. By decision dated April 10, 2003, the Office hearing representative found that the case was not in posture regarding whether appellant's claimed cervical condition was causally related to factors of his employment. The April 15, 2002 decision was set aside and remanded for further development.³

By letter dated July 8, 2003, appellant was referred for a second opinion evaluation to Dr. Steven S. Hughes, a Board-certified orthopedic surgeon. The examination was performed on August 13, 2003. Dr. Hughes reviewed appellant's history and treatment, examined his medical records and reported his findings upon examination. He diagnosed cervical intervertebral disc disorder with myelopathy and cervical stenosis. Also present and noted was diabetes. Dr. Hughes opined that appellant's preexisting condition of cervical degeneration with myelomelasia was not caused by employment factors.

² The Board notes that the form number of the claim appellant filed, Form CA-2a, was struck through and Form CA-1, traumatic injury, was written in.

³ The Office hearing representative noted that the Office treated and developed appellant's claim as a new injury and assigned No. 252055971.

In a decision dated September 16, 2003, the Office denied appellant's claim finding that the claimed medical condition was not related to his work-related activities.

On September 8, 2004 appellant requested reconsideration of the September 16, 2003 decision and submitted argument in two separate letters. He resubmitted a copy of Dr. Hughes' August 13, 2003 report and Dr. Nguyen's February 15, 2001 note. Appellant contended that factors of his employment had accelerated his cervical condition. Also submitted was the April 25, 2002 report from Dr. Herbert.

In a decision dated December 8, 2004, the Office denied reconsideration as the medical evidence had been previously submitted to the record and considered by the Office. The Office found that appellant did not meet any one of the criteria for reopening a case for review of the merits.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁴ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence that was not previously considered by the Office.⁵ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file his application for review within one year of the date of that decision.⁶ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for further review on the merits.⁷ The submission of duplicate medical evidence previously considered does not constitute a basis for reopening a claim.⁸

ANALYSIS

In support of appellant's September 8, 2004 reconsideration request, he submitted duplicate copies of medical reports previously submitted and considered by the Office. These reports included a copy of Dr. Hughes' August 13, 2003 report, the report of Dr. Herbert and the February 15, 2001 note by Dr. Nguyen. These reports had been previously submitted to the record and were considered by the Office. Duplicate medical evidence previously considered does not constitute a basis for reopening a claim for further review on its merits.⁹

⁴ 5 U.S.C. § 8101 *et seq.* Under section 8128 of the Act, "[t]he Secretary of labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ 20 C.F.R. § 10.607(a).

⁷ 20 C.F.R. § 10.608(b).

⁸ *W.H. Van Kirk*, 28 ECAB 542 (1977).

⁹ *Id.*

Appellant's contention that his cervical conditions are employment related is duplicative of his prior contentions. He has not met his burden of proof to reopen his claim for further review of the merits through the submission of new and relevant medical evidence or by advancing an argument not previously considered.

Accordingly, appellant failed to show that the Office erroneously applied or interpreted a specific point of law; failed to advance a relevant legal argument not previously considered by the Office; and failed to provide relevant and pertinent new evidence that was not previously considered by the Office. Therefore, he has failed to establish a reason to reopen appellant's case for further merit reconsideration.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the December 8, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 25, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board